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JUN 07 2004  
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**TRANSMITTAL LETTER**  
**(General - Patent Pending)**

Docket No.  
**DIAZ113**

In Reply, Please Refer to: **ZEHR**

DAE  
#10/2-8-04  
Pet re  
Aband

Serial No.  
**10/008,407**

Filing Date  
**11/13/2001**

Examiner  
**ROSENBAUM**

Group Art Unit  
**3725**

Title: **STATIONARY CONE OVER TUB**

**RECEIVED**

**JUN 09 2004**

**OFFICE OF PETITIONS**

**TO THE COMMISSIONER FOR PATENTS:**

Transmitted herewith is:

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT WITH EXHIBITS A THROUGH D  
RETURN RECEIPT POSTCARD**

in the above identified application.

- ☒ No additional fee is required.
- ☐ A check in the amount of \_\_\_\_\_ is attached.
- ☐ The Director is hereby authorized to charge and credit Deposit Account No. \_\_\_\_\_ as described below.
- ☐ Charge the amount of \_\_\_\_\_
- ☐ Credit any overpayment.
- ☐ Charge any additional fee required.

*Robert L. Shaver*  
\_\_\_\_\_  
Signature

Dated: **JUNE 3, 2004**

**ROBERT L. SHAVER  
DYKAS, SHAVER & NIPPER, LLP  
PO BOX 877  
BOISE, ID 83701-0877  
(208) 345-1122**

I certify that this document and fee is being deposited  
on **JUNE 3, 2004** with the U.S. Postal Service as  
first class mail under 37 C.F.R. 1.8 and is addressed to the  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA  
22313-1450.

*Julie O'Tyson*  
Signature of Person Mailing Correspondence

**JULIE O'TYSON**

Typed or Printed Name of Person Mailing Correspondence

cc:



c) As proof of mailing, a return receipt postcard was attached to the Office Action.

The return receipt postcard was stamped by the Patent and Trademark Office and returned to our office via first class mail on December 8, 2003. A copy of the return receipt postcard is attached hereto and labeled Exhibit C.

e) A Notice of Abandonment was received in this office based on the Applicant's failure to timely file a Response to the Office Action. A copy of the Notice of Abandonment is attached hereto and labeled Exhibit D.

As can be seen from the above list of exhibits, the Response to Office Action dated 16 September 2003 was indeed transmitted to the Patent Office. It is apparent that the Response was misplaced or misrouted within the Patent Office before the deadline for abandonment. The Applicant respectfully submits that this is an appropriate case to Withdraw Holding of Abandonment based on non-receipt of the Response to Office Action.

Wherefore, Applicant petitions the Commissioner to revive this application, reinstate it, and pass the case on to issue.

If there is an additional problem with this Petition, or if the reviewer has any questions, he is requested to call the Applicant's attorney at the number set forth below.

Respectfully submitted this 3<sup>rd</sup> day of June, 2004.

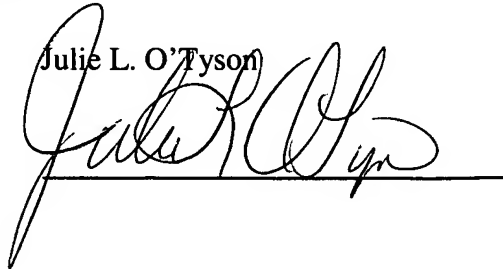
  
\_\_\_\_\_  
ROBERT L. SHAVER  
Reg. No. 42,145  
(208) 345-1122

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents  
P.O. Box 1450 Alexandria, Virginia 22313-1450, on

DATE: June 3, 2004

Julie L. O'Tyson

A handwritten signature in dark ink, appearing to read "Julie L. O'Tyson", is written over a horizontal line. The signature is fluid and cursive.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,407	11/13/2001	Melvin A. Zehr	DIAZ113	2967

21658 7590 09/16/2003

DYKAS, SHAVER & NIPPER, LLP  
P O BOX 877  
BOISE, ID 83701-0877

EXAMINER

ROSENBAUM, MARK

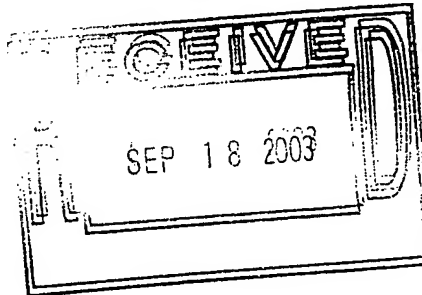
ART UNIT

PAPER NUMBER

3725

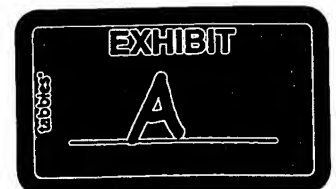
DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



CALENDAR

SEP 16/03





# Office Action Summary

Application No.

10/008,407.

Applicant(s)

ZEHR, MELVIN A.

Examiner

Mark Rosenbaum

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 8 is/are allowed.
- 6) ☒ Claim(s) 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Allowable Subject Matter***

Claims 1-6,8 are allowed.

***Claim Rejections - 35 USC § 112***

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It still is not clear what is being positively claimed in this claim.

***Claim Rejections - 35 USC § 102***

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Pearce, Tamura et al, or Bladykas. See paper number 5 for this rejection.

***Response to Arguments***

Applicant's arguments filed 7/28/03 have been fully considered but they are not persuasive. The 35 USC 112 rejection remains appropriate because of the claim format. The preamble of the claim is 'A loading assistance device...., said loading assistance device comprising'. By using this format, the apparatus prior to the comprising clause is not being positively claimed i.e. the grinding chamber is not being claimed. And if the chamber is not being claimed, how can the smaller end of the device extend through it as set forth in lines 7-8? With the chamber not being positively claimed, the 35 USC 102 rejection also remains proper since all of the references use stationary,

frustoconical hoppers. The fact that the prior art chambers do not rotate is irrelevant since applicant is not claiming the chamber.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Rosenbaum whose telephone number is 703-308-1788. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Ostrager can be reached on 703-308-3136. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Application/Control Number: 10/008,407

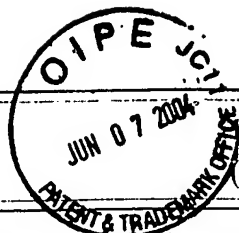
Art Unit: 3725

Page 4

A handwritten signature in black ink, appearing to read "Mark Rosenbaum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark Rosenbaum  
Primary Examiner  
Art Unit 3725

MR



TRANSMITTAL LETTER (General - Patent Pending)	Docket No. DIAZ113
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In Re Application Of: ZEHR, MELVIN A.

Serial No. 10/008,407	Filing Date 11/13/2001	Examiner ROSENBAUM, MARK	Group Art Unit 3725
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Title: STATIONARY CONE OVER TUB

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith is:

RESPONSE TO EXAMINER'S ACTION DATED 09/16/03  
RETURN RECEIPT POSTCARD

COPY


in the above identified application.

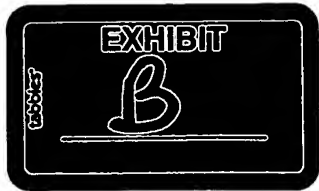
- ☒ No additional fee is required.
- ☐ A check in the amount of \_\_\_\_\_ is attached.
- ☐ The Director is hereby authorized to charge and credit Deposit Account No. \_\_\_\_\_ as described below.
  - ☐ Charge the amount of \_\_\_\_\_
  - ☐ Credit any overpayment.
  - ☐ Charge any additional fee required.

Dated: DECEMBER 3, 2003

*Signature*

ROBERT L. SHAVER  
DYKAS, SHAVER & NIPPER, LLP  
P.O. BOX 877  
BOISE, IDAHO 83701  
(208) 345-1122  
REG. NO. 42,145  
CUST. NO. 21658

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Signature of Person Mailing Correspondence	
LINDSEY RYAN	
Typed or Printed Name of Person Mailing Correspondence	



cc: CLIENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Zehr, Melvin A.

Serial No.: 10/008,407

Filed: 11/13/2001

Group Art Unit: 3725

Subject: Stationary Cone Over Tub

Examiner: Rosenbaum, Mark

Attorney Docket No. DIAZ113

*SW*  
*10/amt B*  
*2.8.05* *(22)*

**RESPONSE TO EXAMINER'S ACTION**

Mailed: 09/16/03

*OK*  
*TO*  
*Ensic*  
*mm*  
*8/11/04*  
Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Commissioner:

In response to the Examiner's Action mailed September 16, 2003, please enter the following amendments and remarks of record:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this Response to Office Action.

**Remarks/Arguments** begin on page 7 of this Response to Office Action.

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

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1. (Original) An apparatus for grinding material comprising:

a grinder frame;

a grinding means mounted to the frame;

a drive means operatively connected to the grinding means;

a rotatable drum assembly having a rotatable circumvolving side wall, a stationary bottom surface, and defining therein a rotating drum space, the bottom surface having an opening therethrough for the passage of material to be ground, the rotatable drum assembly attached to the grinder frame in a position for alignment of the opening in the bottom surface with the grinding means for allowing the passage of material to be ground from the drum space into the grinding means;

means for rotating the rotatable side wall; and

a stationary drum assembly having a frustoconical stationary side wall configured to aid in feeding material into the rotatable drum space the stationary side wall having a smaller diameter end adjacent to the rotatable drum assembly and a larger diameter end, positioned atop the rotatable drum;

whereby material is loaded into the larger diameter end of the frustoconical stationary sidewall, the material passes through the stationary side wall into the rotatable drum space where the material is contacted by the grinding means through the opening in the bottom surface of the rotatable drum assembly.

2. (Original) The apparatus for grinding material of Claim 1 which further comprises means for tilting the rotatable drum and stationary drum assemblies from a vertical position to a tilted position.

3. (Original) The apparatus for grinding material of Claim 1 wherein the diameter of the stationary wall at its largest end is greater than the diameter of the circumvolving rotatable wall.

4. (Original) The apparatus for grinding material of Claim 1 wherein the diameter of the stationary wall at its largest end is greater than the diameter of the circumvolving rotatable wall and the diameter of the stationary wall at its smaller end is less than the diameter of the circumvolving rotatable wall.

5. (Original) The apparatus for grinding material of Claim 4 wherein the stationary wall at its smaller end extends into the rotating drum space.

6. (Original) The apparatus for grinding material of claim 1, wherein said grinding means further comprises:

B 1  
a screen chamber having a first end wall attached to a right rail of the frame and a second end wall attached to a left rail of the frame, the first and second end walls each defining bar passages and providing support for the bars; and

a hammermill assembly attached to the frame having a rotatable hammermill with extending hammers, and a hammermill screen having a plurality of bars mounted within the screen chamber positioned below the hammermill.

7. (Deleted)

8. (Original) An apparatus for grinding material comprising:

a grinder frame;

a hammermill assembly attached to the frame having a rotatable hammermill with extending hammers, and a hammermill screen having a plurality of bars mounted within the screen chamber positioned below the hammermill;

a screen chamber having a first end wall attached to the right rail of the frame and a second end wall attached to the left rail of the frame, the first and second end walls each defining bar passages and providing support for the bars;

a drive means operatively connected to the grinding means;

a rotatable drum assembly having a rotatable circumvolving side wall, a stationary bottom surface, and defining therein a rotating drum space, the bottom surface having an opening therethrough for the passage of material to be ground, the rotatable drum attached to the grinder frame in a position for alignment of the opening in the bottom surface with the grinding means for allowing the passage of material to be ground from the drum space into the grinding means;

means for rotating the rotatable side wall;

a stationary drum assembly having a frustoconical stationary side wall configured to aid in feeding material into the rotatable drum space attached to the frame, the stationary side wall having a smaller diameter end extending into the rotatable drum assembly and a larger diameter end, attached to the grinder frame and positioned atop the rotatable drum wherein the diameter of the stationary wall at its largest end is greater than the diameter of the circumvolving rotatable wall; and

means for tilting the rotatable drum and stationary drum assemblies from a vertical position to a tilted position;

*P* whereby material is loaded into the larger diameter end of the frustoconical stationary sidewall, the material passes through the stationary side wall into the rotatable drum space where the material is contacted by the hammerends of the hammermill through the opening in the bottom surface of the rotatable drum assembly.

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REMARKS

1. The Examiner has noted that Claim 7 was not patentable for various reasons. Claim 7 has been deleted from the application.

CONCLUSION

The applicant therefore feels that the patent is in condition for allowance, and respectfully requests the same.

DATED This 3<sup>rd</sup> day of December, 2003.

Very respectfully,

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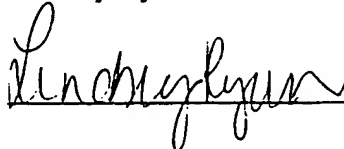
ROBERT L. SHAVER  
Reg. No. 42,145  
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CERTIFICATE OF MAILING

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P.O. Box 1450 Alexandria, Virginia 22313-1450, on

DATE: December 3, 2003

Lindsey Ryan



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Response to Office Action dated 09/16/03, General  
Transmittal with Certificate of Mailing by First Class Mail

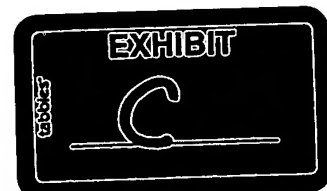
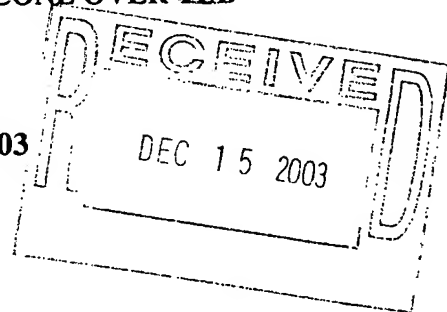
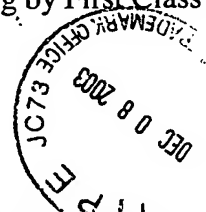
**Applicant:** ZEHR

**Ser. No.:** 10/008,407

**Title:** STATIONARY CONE OVER TUB

**Our File:** DIAZ113

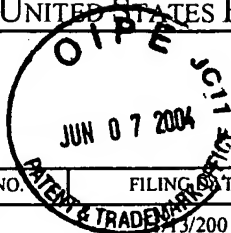
**Date:** December 3, 2003





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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,407	05/13/2001	Melvin A. Zehr	DIAZ113	2967

21658 7590 05/28/2004

DYKAS, SHAVER & NIPPER, LLP  
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BOISE, ID 83701

EXAMINER

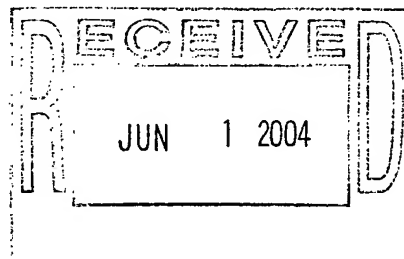
ROSENBAUM, MARK

ART UNIT PAPER NUMBER

3725

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



**Notice of Abandonment**

Application No.

10/008,407

Applicant(s)

ZEHR, MELVIN A.

Examiner

Mark Rosenbaum

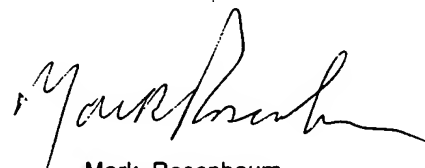
Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 September 2003.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:



Mark Rosenbaum  
Primary Examiner  
Art Unit: 3725

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.